

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1039 of 1997

to

FIRST APPEAL No 1063 of 1997

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

LILA NATHU RABARI

Appearance:

MR SJ DAVE for the appellants

MR VIPUL S MODI for the respondents

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 06/05/98

COMMON ORAL JUDGEMENT (Per Y.B. Bhatt J.)

1. These appeals were admitted by this Bench by our

earlier order dated 5th March 1998. This group of appeals has been placed before us on a joint request by learned counsel for the respective parties, wherein Mr. Vipul Modi appears for the respondents-original claimants and states that he waives service of notice in the appeal on behalf of the respondents-original claimants.

2. On the joint request of learned counsel for the respective parties these appeals are taken up for final hearing today.

3. These are appeals filed by the appellant State of Gujarat under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the common judgement and awards passed by the Reference Court under section 18 of the said Act.

4. The lands in question were acquired for the SIPPU Reservoir Project and are situated in the village Atal, Taluka Danera, District Banaskanta, under a notification published under section 4 of the said Act dated 30th August 1984. After the procedural formalities the Land Acquisition Officer declared his award under section 11 of the said Act on 28th February 1985. The claimants not having accepted the award, preferred applications for making Reference under section 18 of the said Act. The Reference Court, after recording evidence and hearing the parties, determined the market value of the acquired lands at Rs.40000/- per hectare (Rs.400/- per Are) and also granted other statutory additional compensation, interest, etc.

5. We may initially deal with the minor aspects of the matter.

6. Learned counsel for the appellants submits that the Reference Court has erred in awarding compensation under the head of wells and certain infrastructure such as "kuchha construction, pipelines", etc. Different rates have been awarded for pucca wells and kuchha wells. In this context learned counsel for the appellants submits that where the lands are agricultural lands and where they have been valued by the Reference Court as irrigated agricultural lands, such valuation is on the facts of the case necessarily based on the source of irrigation viz. the wells being located on the land itself. Thus, when the source of irrigation is itself the cause for a higher valuation of such agricultural land as an irrigated land, such source of irrigation, viz. the well cannot be independently and separately valued for the purposes of awarding compensation, and no

compensation under this head can be awarded in law. This submission is required to be upheld in view of the decision of the Supreme Court in the case of State of Bihar, reported in 1996 (10) SCC page 635, following the earlier decision of the Supreme Court in the case of O. Janardan Reddy, reported at 1994 (6) SCC page 456. Thus, the amount awarded by the Reference Court for wells (both kuchha as also pucca wells) and infrastructure such as pipelines, etc., must necessarily be disallowed. We hold and direct accordingly.

7. The learned counsel for the appellants has also contended that the Reference Court has awarded separate compensation for trees as also for kuchha houses, which compensation is not justified looking to the evidence on record. In the context of this submission, learned counsel for the respondents-original claimants conceded that compensation under these heads may not be justified looking to the evidence on record, and in any case, he conceded that compensation under these heads may be disallowed. We hold and direct accordingly.

8. So far as the market value of the acquired lands is concerned, as observed hereinabove, the Reference Court has determined the same at Rs.40000/- per hectare (Rs.400/- per Are). In this context learned counsel for the appellants contended that the same is substantially on the higher side and is required to be reduced. In the context of this submission, learned counsel for the respective parties drew our attention to a decision rendered by this very Bench, in the first sitting today i.e. on 6.5.1998, rendered in First Appeal Nos.928/97 to 985/97. Learned counsel for the respective parties jointly submitted that the acquisition in the instant case and the one considered by us in the aforesaid judgement was for the very same project viz. SIPPUR Reservoir Project, and further that both the acquisitions were in respect of lands situated in the very same village viz. Atal, Taluka Danera. Thus, learned counsel for the respective parties jointly submitted that the market value of the lands under the instant acquisition can fairly and justly be determined on the basis of, and at par with the market value determined by us in our aforesaid decision. Thus, on the facts and circumstances of the case, as jointly submitted by the learned counsel for the respective parties, and following our previous decision referred to hereinabove, we determine the market value of the lands under acquisition in the instant group of appeals at Rs.35000/- per hectare (Rs.350/- per Are). The compensation shall be paid on the basis of such valuation.

9. However, one point raised by learned counsel for the respondents-original claimants also requires consideration. It is pointed out that the Reference Court has directed a deduction of 5% from the compensation payable to the claimants, where the acquired lands were New Tenure lands. Obviously such a deduction is not justifiable in law, at this rate or at any other rate whatsoever, in view of the decision of the Supreme Court in the case of State of Maharashtra, reported at Air 1996 SC page 904, followed by a Division Bench of this Court in the case of Deputy General Manager, ONGC Vs. Chaturji Lalaji, reported at 1998 (1) GLR page 130. Obviously, therefore, such a deduction is not sustainable in law and therefore, requires to be deleted. We accordingly hold and direct that there shall be no such deduction.

10. No other contentions have been raised by either side.

11. These appeals are, therefore, partly allowed to the aforesaid extent with no order as to costs. Decree accordingly.
